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H. Peter-Brady

ORIGINAL

# FEDERAL COMMUNICATIONS COMMISSION

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In the Matter of: )

JAMES A. KAY, JR. )

) Docket No. 94-147

)  
)  
) Licensee of One Hundred Fifty-Two  
) Part 90 Licenses in the  
) Los Angeles, California, Area )

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## HERITAGE REPORTING CORPORATION

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In Re Applications of: )  
 )  
JAMES A. KAY, JR. ) Docket No. 94-147  
 )  
Licensee of One Hundred Fifty-Two )  
Part 90 Licenses in the )  
Los Angeles, California, Area )

Room A-363  
The Portals  
445 12th Street, S.W.  
Washington, D.C.

The parties met, pursuant to the notice of the  
Chief Judge, at 9:00 a.m.

BEFORE: HON. JOSEPH CHACHKIN  
Chief Administrative Law Judge

On behalf of James A. Kay, Jr.:

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I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
James A. Kay, Jr.	1177	--	--	--	--

Hearing Began:	9:00 a.m.	Hearing Ended:	3:00 p.m.
Recess Began:	12:00 p.m.	Recess Ended:	1:00 p.m.

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1                   P R O C E E D I N G S

2                   JUDGE CHACHKIN: All right. On the record.

3                   Mr. Schauble?

4                   MR. SCHAUBLE: Thank you, Your Honor.

5                   Whereupon,

6                   JAMES A. KAY, JR.

7                   having been previously duly sworn, was recalled as a witness  
8                   herein and was examined and testified further as follows:

9                   DIRECT EXAMINATION RESUMED

10                  BY MR. SCHAUBLE:

11                  Q     Good morning, Mr. Kay.

12                  A     Good morning, Mr. Schauble.

13                  Q     Could you please turn to Bureau Exhibit 17.

14                  JUDGE CHACHKIN: We are going backwards.

15                  MR. SCHAUBLE: I am sort of following up on a  
16                  matter that was discussed --

17                  JUDGE CHACHKIN: Okay.

18                  MR. SCHAUBLE: -- yesterday, Your Honor.

19                  JUDGE CHACHKIN: All right. Fine. All right.

20                  What page on Exhibit 17?

21                  MR. SCHAUBLE: After some general questions, I  
22                  will be directing attention to page 2 of the document.

23                  BY MR. SCHAUBLE:

24                  Q     My initial question, Mr. Kay, is do you recognize  
25                  this as a declaration you executed?

1 A Yes.

2 Q Do you recall that you made this declaration in  
3 connection with opposing a motion for summary decision that  
4 was filed by the Bureau in this proceeding?

5 A I don't specifically remember, but I'll take your  
6 word for it.

7 Q Okay. I direct your attention to Paragraph 3 of  
8 the document on page 1.

9 A Okay. Turning to Paragraph 4 of the document, Mr.  
10 Kay, read as much as you need to get the context, but --

11 MR. SHAINIS: What page was that?

12 MR. SCHAUBLE: It starts on page 1 and goes over  
13 to page 2.

14 MR. SHAINIS: Paragraph 4?

15 MR. SCHAUBLE: Paragraph 4.

16 JUDGE CHACKIN: What is your question?

17 BY MR. SCHAUBLE:

18 Q My question, Mr. Kay, is do you see the last  
19 sentence, which says, "In other words, the Bureau now has a  
20 copy of every single record of my customers which is known  
21 to exist?"

22 A Yes, I see that.

23 Q Okay. Was that a true statement at the time that  
24 it was made?

25 A I believe it was.

1 Q Okay.

2 A I don't know what other records I would have that  
3 would have been responsive to your inquiry. This refers to  
4 any -- every single record of my customers which is known to  
5 exist. That would relate to what they're talking about here  
6 is Interrogatory No. 4.

7 The universe, the records, that I had that would  
8 have met the request of Interrogatory No. 4 was supplied. I  
9 think you had to include it as being part of the paragraph  
10 here, as compared to --

11 Q Okay.

12 A -- every document that I ever had for a customer  
13 that may not have complied with the four corners of  
14 Interrogatory No. 4. We have to keep that in the context of  
15 Interrogatory No. 4, which Paragraph No. 4 was answering.

16 Q Now, you have a large number of rental agreements  
17 and agreements relating to demos, correct?

18 A We pulled our -- we searched for records of those  
19 uses, and I turned them over to my attorneys to use in this  
20 proceeding. They did not contain information that fell  
21 under Interrogatory No. 4.

22 Q Okay.

23 A At least that's my understanding.

24 Q Okay. Can you explain the reason why these  
25 documents relating to rental and demo agreements were not

1 provided in response to the Bureau in connection with  
2 discovery in this proceeding?

3 JUDGE CHACHKIN: You are talking about No. 4.  
4 What does No. 4 ask for? Is that set forth somewhere?

5 MR. SCHAUBLE: Your Honor, if you look at page 1  
6 of Paragraph 19, "With respect to each of the call signs  
7 listed, identify each and every end user and the number of  
8 mobile units of each such end user, i.e., customer, since  
9 January 1, 1991."

10 JUDGE CHACHKIN: Now, your question is in that  
11 context for what? You believe that was not responsive, that  
12 more information should be supplied? What is your position?

13 MR. SCHAUBLE: As I understand Mr. Kay's position  
14 currently, these rental and demo units, that he is going to  
15 rely on this as evidence of loading in this proceeding. It  
16 is our position that if he was going to do that, this  
17 material should have been provided in discovery in this  
18 proceeding.

19 JUDGE CHACHKIN: Under Item 4?

20 MR. SCHAUBLE: Correct.

21 JUDGE CHACHKIN: Mr. Kay, do you have any  
22 response?

23 THE WITNESS: Yes, Your Honor. Interrogatory No.  
24 4 starts off with, "For each station...", meaning the call  
25 sign. A call sign contains frequencies and locations. Our



1 rental agreements do not contain frequencies or locations.  
2 To match up a rental agreement to a specific call sign or a  
3 demo to a specific call sign would be if not an  
4 impossibility, a near impossibility.

5           You wanted us to tabulate for you -- that's what  
6 you demanded -- a list of all our users and basically  
7 categorize them to each call sign. First of all, we didn't  
8 keep our records by call sign. We kept them by frequency  
9 and site, but our rental agreements didn't have that  
10 information.

11           We could not correlate our rental agreements to a  
12 given call sign, especially when we give a rental unit to a  
13 customer that would have like for a demo it may have ten  
14 different systems in it, and we tell the customer here, try  
15 these. See which one meets your needs.

16           To have taken that, even if we knew that Company  
17 X, for example, was given rentals to use that had a variety  
18 of frequencies in them, we didn't keep a record of that. It  
19 would be impossible to take a rental or a demo to Company X  
20 and say okay, fine. Well, this should be loading on WNJA  
21 910 or WIK whatever. Pick a call sign. We couldn't make  
22 that correlation or we would have done it and put them in.

23           Those did not meet the four corners of what you  
24 asked for in Interrogatory No. 4. Does that explain it?

25           MR. SCHAUBLE: Okay.

1 BY MR. SCHAUBLE:

2 Q Now turn to Paragraph 13, which is on page 5 of  
3 the exhibit.

4 MR. KELLER: Paragraph 13 did you say?

5 MR. SCHAUBLE: Paragraph 13, page 5.

6 BY MR. SCHAUBLE:

7 Q Take a moment to read the paragraph to yourself,  
8 Mr. Kay.

9 (Pause.)

10 A Yes.

11 Q Mr. Kay, do you recall that at this point that the  
12 Bureau had argued that the further answer to Interrogatory  
13 No. 4 was inadequate because on certain pages of the report  
14 multiple call signs were listed on one page?

15 A Yes.

16 Q Okay.

17 A I don't recall your argument, but I know that  
18 multiple call signs were listed on one page.

19 JUDGE CHACHKIN: You are arguing a motion for  
20 summary decision?

21 MR. SCHAUBLE: A motion for summary decision, Your  
22 Honor.

23 JUDGE CHACHKIN: So what about it?

24 MR. SCHAUBLE: Okay. That is a foundational  
25 question, Your Honor.

1 JUDGE CHACKIN: All right.

2 BY MR. SCHAUBLE:

3 Q Correct in Paragraph 13, here you state, "The  
4 multiple call signs are listed. All customers have access  
5 to both or all of the call signs," correct?

6 A Correct.

7 Q We now know in fact that these pages on which  
8 multiple call signs are listed represent a, and specifically  
9 referring to pages 5, 6, 7 and 8 of the Exhibit 19, that  
10 those pages represent what we will refer to as Spillman  
11 formatted quasi trunking systems, correct?

12 A Which ones did you just reference? Exhibit 19 was  
13 it?

14 Q 19, pages 5 through 8.

15 A Yes. Those pages represent the Spillman trunk  
16 system style trunk systems, and those users on those pages  
17 would have access to all four channels. Correct.

18 Q Okay. Is there a reason in this affidavit you did  
19 not explain what pages represented Spillman formatted quasi  
20 trunking systems?

21 A The first answer that comes to my mind is I wasn't  
22 asked. I wasn't -- that was not something that was asked on  
23 the interrogatory. You didn't ask how my systems were  
24 configured.

25 You inspected all my systems in 1997. If you

1 wanted to know that, all you had to do was ask. There's  
2 nothing hidden here. All the customers have access to all  
3 four call signs as part of that system.

4 That isn't the only example of that either. We  
5 have -- there's one in here where two trunk systems operate  
6 together on 800 megahertz, and all the users are listed as  
7 having access to both.

8 Q Mr. Kay, please now direct your attention to  
9 Bureau Exhibit 130. I do not know if you still have that.

10 A I have 131 to 180 here.

11 JUDGE CHACHKIN: What volume are we in now, four?

12 MR. SCHAUBLE: 130. We are almost on the end  
13 between two books here.

14 THE WITNESS: I do not see it here. Okay. I have  
15 it.

16 BY MR. SCHAUBLE:

17 Q Do you see the first record there for WIK205?

18 A Yes.

19 Q Do you see on page 3 of the exhibit --

20 A Yes.

21 Q -- the number of mobiles authorized under this  
22 authorization is 180?

23 A That's correct. This is another one of the ones  
24 you'll find in that application --

25 Q Okay.

1 A -- to reduce mobiles to 90 that was filed in 1994.

2 Q Okay. Turn to page 6 of the exhibit.

3 A Okay.

4 Q Do you see WIJ754?

5 A Yes.

6 Q Turning to page 9 of the exhibit, --

7 A Okay.

8 Q -- do you see the number of mobiles authorized  
9 under that authorization is 180?

10 A Yes, it is.

11 Q Okay. Turning to page 12, --

12 A Yes.

13 Q -- WIK878. Do you see that record before you?

14 A Yes, I do.

15 Q Turn to Page 15 of the exhibit. Do you see the  
16 number of mobiles authorized as 180?

17 A Yes, I do.

18 Q Okay. Finally, turning to page 18 of the  
19 exhibit, --

20 A Yes.

21 Q -- WIL729. Do you see that record?

22 A Yes, I do.

23 Q And on page 21 do you see the number of mobiles  
24 authorized as 180?

25 A That's correct.

1 Q Okay. Actually, Mr. Kay, turn to the next volume,  
2 Exhibit 131. I am sorry. Excuse me. 133.

3 JUDGE CHACHKIN: What exhibit?

4 MR. SCHAUBLE: 133.

5 JUDGE CHACHKIN: What page? Page 1?

6 MR. SCHAUBLE: It is a one page exhibit.

7 JUDGE CHACHKIN: All right.

8 BY MR. SCHAUBLE:

9 Q Mr. Kay, do you recognize that this is your  
10 response, a portion of your response, to further answer to  
11 Interrogatory 4 dealing with the four call signs listed  
12 thereon?

13 A Yes, it is.

14 Q Okay. Is it correct that these four call signs  
15 together represent a Spillman formatted quasi trunking  
16 system?

17 A Well, the third call sign down is supposed to be  
18 WIJ instead of WIK. I think I mentioned that error to you,  
19 but, yes. That's exactly what it is.

20 Q Okay. Do you recall the application? Did it deal  
21 with all four call signs listed? As part of the system, did  
22 it propose to modify, among other things, all four  
23 stations --

24 A Yes.

25 Q -- as part of the system?

1 A Yes, it did.

2 Q Okay. Turning to the first notation, A-1 Rentals,  
3 under there, do you see that?

4 A Yes.

5 Q I will represent to you, subject to check by your  
6 counsel, that in Exhibit 347, which is the customer print  
7 screens, that we did not see a customer print screen  
8 produced for A-1 Rentals.

9 Again, these reports were prepared as of November,  
10 1995, correct?

11 A Correct.

12 Q And the customer print screens were produced as of  
13 March, 1995?

14 A Yes.

15 Q Sitting here today, you could not provide a  
16 specific explanation as to why no customer print screen was  
17 produced for A-1 Rentals, could you?

18 A Well, there could be one or two possibilities I  
19 could think of. They either weren't on when the first one  
20 was done, or it was a company that changed name in the  
21 meantime, and hence the name changed.

22 Q Okay.

23 A Beyond that, I couldn't tell you. If it's on the  
24 loading reports here, it came off the computer, which means  
25 the information was on there, so my suspicion would be that

1 they were added in that approximately seven to eight month  
2 period between the two reports generated.

3 Q Okay.

4 A That would be my suspicion. That would be my best  
5 estimate.

6 Q Okay. Mr. Kay, please turn to WTB Exhibit 135.

7 A Okay.

8 Q That is the record for WIK208.

9 A Right.

10 MR. KELLER: I am sorry, counsel. Exhibit 135?

11 MR. SCHAUBLE: 135.

12 MR. KELLER: Thank you.

13 BY MR. SCHAUBLE:

14 Q Turn to page 4 of the exhibit.

15 A Okay.

16 Q Do you see the number of mobiles authorized under  
17 that authorization as 90?

18 A Yes.

19 Q Okay. Turn to WTB Exhibit 136.

20 A Okay.

21 Q Do you recognize that as the portion of further  
22 answer to Interrogatory 4 relating to WIK208?

23 JUDGE CHACKIN: Why can we not assume that it is  
24 a further answer unless the witness says differently to move  
25 things along?



1 MR. SCHAUBLE: If that is acceptable.

2 JUDGE CHACHKIN: Let's assume that unless the  
3 witness says it is not a further answer.

4 MR. KELLER: You have the whole further answer in  
5 the exhibit separately, too.

6 JUDGE CHACHKIN: You do not have to repeat that  
7 and ask the witness the question. We can move along.

8 Let's assume it is a further answer and go ahead  
9 with your questioning.

10 MR. SCHAUBLE: Okay.

11 BY MR. SCHAUBLE:

12 Q Mr. Kay, turn to WTB Exhibit 137, which I  
13 believe --

14 A Okay.

15 Q -- is a customer print screen for Wambold  
16 Furniture?

17 A Yes.

18 Q Do you see the end date, 6-30-91?

19 A Yes.

20 Q So it would be correct that on or before June 30,  
21 1991, Wambold Furniture was no longer operating on this  
22 station?

23 A I believe that's the end date for our billing.  
24 Wambold, I believe, to the best of my knowledge -- I have  
25 not been informed otherwise -- they still operate on that

1 channel using a considerable quantity. Here it says 25  
2 portable units in their furniture factory in Simi Valley.

3 We're not charging them for the repeater service  
4 because they chose simply to use talk around unit to unit,  
5 and we allow our customers to use talk arounds. If they had  
6 been a customer under a repeater service and they still have  
7 radios they want to use unit to unit, we say fine, go ahead  
8 and keep on using them, but we don't bill them for it.

9 To the best of my knowledge sitting here today,  
10 this company is still active and operational on this channel  
11 with those radios. I haven't been informed otherwise.

12 We're not billing them for simply using the unit  
13 to unit on one of our private carrier frequencies. That  
14 wouldn't be sporting. We'd have to go change all the  
15 frequencies if we told them they couldn't operate under a  
16 private carrier license anymore. You don't do that to good  
17 customers.

18 Q So it is your belief that they are using the  
19 frequency, but just using it on a talk around basis?

20 A Correct. We have customers that have purchased a  
21 repeater service from us that have special portable units  
22 that they use unit to unit that for one reason or another  
23 their businesses no longer require the repeater service, but  
24 they still want to continue to use the radios unit to unit  
25 for on site uses. Electricians do that a lot for pulling

1 wires in buildings.

2 It's been my policy that if a good customer who  
3 has paid his bills, decides to drop the repeater service but  
4 still wants to use his radios, which are on a frequency  
5 assigned to me as a private carrier, I will continue to  
6 allow them to use the frequency licensed to me, even though  
7 they're not paying me, if they use it for the talk around.  
8 They're not taking any capacity away from me.

9 The only other way would be to tell the customer  
10 they have to reprogram their own radios or go get their own  
11 license. That's kind of a stick in the eye of a good  
12 customer. That's what's happened with Wambold here.

13 Q Okay, Mr. Kay. Please turn to WTB Exhibit 138.

14 A Sure.

15 Q WIK216. Do you have that before you?

16 A Yes.

17 Q Do you see on page 4 the number of mobiles  
18 authorized under this authorization is 90?

19 A Yes.

20 Q Mr. Kay, please turn your attention to Exhibit  
21 141. On page 2 of the exhibit, do you see the reference to  
22 All-State Lock and Key?

23 A Yes.

24 Q Now turn to page 2 of exhibit 132.

25 A Okay.

1 Q Do you recognize that as the customer print screen  
2 for All-State Lock and Key?

3 A Yes.

4 Q Do you see the end date, 6-30-94?

5 A Yes.

6 Q To your knowledge, did All-State Lock and Key  
7 continue to operate on this frequency after 6-30-94?

8 A He stopped paying us and we turned him off, but he  
9 still has radios in his possession. This man went to  
10 collections and lawsuit for breach of contract.

11 Q Okay.

12 A He still has his radios. Whether he's using them,  
13 I don't know. He isn't using my repeaters with them anyway.

14 Q Turn to page 5, JDS Construction.

15 A Okay.

16 Q Do you see the end date there of 10-31-94?

17 A Yes.

18 Q Did JDS Construction continue to operate on this  
19 frequency after 10-31-94?

20 A I don't know. I don't have any personal knowledge  
21 of this account.

22 Q Okay. Mr. Kay, please direct your attention to  
23 WTB Exhibit 143.

24 A Okay.

25 Q WIK270. Do you see that?

1 A Yes, I do.

2 Q Do you see on page 4, the number of mobiles  
3 authorized under that authorization is 85?

4 A Yes, I do.

5 Q Okay. Do you recall whether this authorization  
6 was ever part of any pending application to modify or reduce  
7 your mobile count?

8 A I don't recall.

9 Q Turn to Exhibit 144. The customer listed there is  
10 Qualified Circulation Corp.

11 A Yes.

12 Q Now turn to Exhibit 145. Do you see the customer  
13 print screen for Qualified Circulation Corp.?

14 A Yes.

15 Q Do you see an end date of 9-30-94?

16 A Yes.

17 Q Do you know if Qualified Circulation Corp.  
18 continued to operate on this channel after 9-30-94?

19 A I don't know.

20 MR. KELLER: Counsel, what is the relevance?

21 There is a whole series of questions here that you are  
22 asking that are showing things in Exhibit 19 and showing the  
23 end dates in the customer print screens, which is not at all  
24 surprising, given the witness has already testified that the  
25 release flag was turned off when they printed this, so I am

1 just asking for a clarification as to the relevance.

2 MR. SCHAUBLE: With respect to Wambold Furniture,  
3 Mr. Kay explained that although the end date was on there,  
4 in fact the customer was continuing to use the channel.

5 JUDGE CHACHKIN: Yes, but what is the relevance of  
6 all these questions?

7 MR. KELLER: Even accepting that or accepting that  
8 he did not know why, what is the relevance?

9 MR. SCHAUBLE: Your Honor, we are trying to  
10 ascertain what the state of Mr. Kay's loading was on these  
11 various channels.

12 JUDGE CHACHKIN: As of what date?

13 MR. SCHAUBLE: We have two data sets of  
14 information here, March '95, and November of '95.

15 JUDGE CHACHKIN: I do not know what you're gonna  
16 accomplish with these questions, frankly, in terms of what  
17 the issue is whether he willfully violated certain rules.

18 I do not know where this goes as far as the  
19 particular issue is concerned. We are not dealing with  
20 whether a particular license should be taken away because  
21 there is not sufficient loading on a frequency. The issue  
22 speaks to whether he willfully violated certain rules,  
23 willfully and repeatedly violated certain rules.

24 I do not know how this is going to help you reach  
25 that point one way or the other, but go ahead. How much

1 more do you have to go with these type of questions?

2 MR. SCHAUBLE: Your Honor, since we have a large  
3 number of authorizations here where the record shows, or at  
4 least the records that were provided to us show, that Mr.  
5 Kay does not have the loading required under the rules here,  
6 I do not know of any way to do it other than just go through  
7 each authorization and give it --

8 JUDGE CHACHKIN: Well, go ahead.

9 MR. KELLER: Will the records speak for themselves  
10 or not?

11 MR. SCHAUBLE: In certain cases, Your Honor, we  
12 are hearing explanations here from --

13 JUDGE CHACHKIN: Yes. You had four days of  
14 depositions. I do not know why you did not ask these  
15 questions then, so we have a record, but go ahead. Let's  
16 see if we can move it a little faster.

17 THE WITNESS: You mentioned explanations. Two of  
18 the ones you just asked have them. We just went through  
19 them. 5081625 is now incorporated as part of a Spillman  
20 system. 5089125 is a frequency with qualified circulation.

21 If you take a look at Mount Lukens under that same  
22 frequency, you'll find a taxicab company, Bell Cab. One of  
23 their various divisions is on there with a whole slew of  
24 taxicabs, and they have access to this station, WIK276.

25 If you want to know what we're doing, John, all

1     you've got to do is ask. We can't let frequencies sit out  
2     there fallow. That's our stock and trade. That's what we  
3     sell, John.

4             JUDGE CHACHKIN: All right. Let's continue.

5             BY MR. SCHAUBLE:

6             Q     Okay. Directing your attention to WTB Exhibit  
7     146, WIK294, --

8             A     Yes.

9             Q     -- and turning to page 4, do you see the number of  
10    mobiles authorized as 69?

11            A     Yes.

12            Q     Mr. Kay, please turn to Exhibit 149. Do you see  
13    the reference there to Alpha Group Security?

14            A     Yes, I do.

15            Q     Okay. Turn to Exhibit 150, page 1. Do you see on  
16    the customer print screen for Alpha Group Security an end  
17    date of 9-30-94?

18            A     Yes.

19            Q     Okay. Did Alpha Group Security continue to  
20    operate on that frequency on or after 9-30-94?

21            A     I can't say with certainty, but I believe they  
22    did. This account went to collections because they breached  
23    our contract and stopped paying us, but still continued to  
24    use radios as part of their company. I believe they were  
25    using talk arounds. We had quite a problem with these



1 particular fellows is why I remember that.

2 Q Okay.

3 A I don't know for sure what periods of time sitting  
4 here. I would have to contact my attorney and get my legal  
5 file on these guys.

6 Q Okay. Turn to WTB Exhibit 151.

7 A Yes.

8 Q WIK303.

9 A Yes.

10 Q On page 4, do you see the number of mobiles  
11 authorized as 70?

12 A Yes.

13 Q Now, on Exhibit 152 --

14 MR. SHAINIS: Excuse me. Your Honor, if I  
15 understood that, what Mr. Schauble has just done is ask the  
16 witness to read the exhibit. The exhibit shows authorized  
17 mobiles as 70. There was no further question on the  
18 exhibit. I mean, this seems to be --

19 JUDGE CHACKIN: I do not know the purpose of  
20 this. What is the purpose of having him reading something  
21 that is in the exhibit and then moving on to something else?  
22 The exhibit speaks for itself.

23 What is the purpose? If you do not ask him about  
24 a particular customer, what is the purpose of having him  
25 read what it says in the exhibit?

1 MR. SCHAUBLE: Your Honor, I was going to follow  
2 up with a question on a particular customer here.

3 JUDGE CHACHKIN: All right. Go ahead.

4 MR. SCHAUBLE: Okay. Actually, Your Honor, first  
5 a matter with respect to counsel. A review of our records  
6 on WIK303, page 2 and page 3 --

7 MR. SHAINIS: Of what exhibit?

8 MR. SCHAUBLE: This is Exhibit 152.

9 MR. SHAINIS: And it is WIK303?

10 MR. SCHAUBLE: Yes. Do you see the handwritten  
11 notation, WIK303, page 2, and --

12 MR. SHAINIS: Right.

13 MR. SCHAUBLE: -- WIK303, page 3?

14 MR. SHAINIS: Yes.

15 MR. SCHAUBLE: We were not able to find in our  
16 production a page 1 for WIK303. Do you have in your records  
17 a --

18 MR. SHAINIS: We will check, but I do not believe  
19 we do.

20 JUDGE CHACHKIN: All right. What I am curious  
21 about is if the witness says I do not know or I believe that  
22 they continued to be a customer, continued to use radios, or  
23 I do not know, what are you going to do with that  
24 information in making findings in terms of the issue,  
25 whether he willfully violated the rules? Do you have any

1 witnesses who are going to be able to testify that in fact  
2 the channel was not being used?

3 I mean, what are you going to do when he says I do  
4 not know? Where do we go from there in terms of you proving  
5 your case?

6 MR. SCHAUBLE: Your Honor, I think we are  
7 entitled. I mean, when it says end date here --

8 JUDGE CHACHKIN: I understand that, but I am  
9 asking you. If the witness says I do not know or I do not  
10 remember, where are you going to go from there to prove it,  
11 to disprove him or to establish that in fact there were not  
12 any mobiles being used on a frequency? How are you going to  
13 prove it? What are you going to do with that information?

14 MR. SCHAUBLE: Your Honor, the question is not  
15 whether there are any mobiles. I questioned the number of  
16 mobiles that are operating on a --

17 JUDGE CHACHKIN: I understand that. If you ask  
18 the question like you did in these cases about a particular  
19 customer and the witness said I do not know, what are you  
20 going to do from there? Are you going to put in evidence  
21 showing in fact it was not being used or what? Are we left  
22 with I do not know?

23 MR. SCHAUBLE: Your Honor, I make the finding  
24 based on the end date in the customer file that after the  
25 end date the customer was not, that particular customer --

1 JUDGE CHACHKIN: On what basis are you going to  
2 make that finding? Do you have evidence to that?

3 MR. SCHAUBLE: Your Honor, we think the customer  
4 print screen is evidence of that.

5 JUDGE CHACHKIN: But that is as of a certain date.  
6 How does that establish what happened afterwards?

7 You did not ask for current print screens. You  
8 asked for print screens as of a certain date. He gave you  
9 that date. How are you going to establish that in fact that  
10 particular customer was using radios after that date?

11 MR. SCHAUBLE: Your Honor, these records, Exhibit  
12 19, is a list of all customers between September, 1993, and  
13 November, 1995.

14 JUDGE CHACHKIN: Fine. Now, what are you going to  
15 do after that date --

16 MR. SCHAUBLE: Your Honor, we are not --

17 JUDGE CHACHKIN: -- to show what currently is the  
18 picture?

19 MR. SCHAUBLE: Your Honor, we do not think the  
20 issue is what the current loading is.

21 JUDGE CHACHKIN: All right. What are you going to  
22 do between the time of the ending date here or 1995 where  
23 the witness says I do not know?

24 MR. SCHAUBLE: Your Honor, we are not asking about  
25 between November. What we are asking about is when there is

1 an end date here, I think what the pertinent period is is  
2 between the end date and November, 1995.

3 JUDGE CHACHKIN: I know, and I am asking you.  
4 What are you going to do when the witness says I do not  
5 know? Are you going to assume that, therefore, since he  
6 does not know, therefore that this particular customer was  
7 not using the --

8 MR. SCHAUBLE: Your Honor, if the customer print  
9 screen indicates that the customer was operating throughout  
10 that entire period, then clearly I think the record would  
11 show that. You know, there would be evidence to support  
12 that.

13 JUDGE CHACHKIN: I am saying you just asked the  
14 witness was the customer operating after this date, and the  
15 witness says I do not know. Do you have any evidence to  
16 establish that the witness was not operating?

17 MR. SCHAUBLE: The evidence, Your Honor, would be  
18 the end date on the customer print screen, recognizing that  
19 there might be --

20 JUDGE CHACHKIN: On what basis? That is  
21 speculation.

22 MR. SCHAUBLE: I do not think that --

23 JUDGE CHACHKIN: You are speculating that the  
24 customer was not there. Do you have any basis for that  
25 assertion, for that statement?

1 MR. SCHAUBLE: Your Honor, Mr. Kay testified when  
2 we went through the customer print screens yesterday as a  
3 general proposition that when there is an end date on the  
4 customer print screen that is generally on or about the date  
5 on which the customer ended service. He is now saying there  
6 are limited circumstances under which that may not in fact  
7 be the case.

8 JUDGE CHACHKIN: Right. The witness has told you  
9 in some instances that he believes the customer is still  
10 using radios. In some cases he had not paid his bills and  
11 it is now a collection matter, but he believes he was still  
12 using radios in some cases.

13 In other cases Mr. Kay says I do not know. If he  
14 says I do not know, that is what I am trying to understand.  
15 Where are you going to go from there? Are you going to show  
16 that in fact there were not any mobiles being used or what?  
17 When your witness says I do not know, what does that mean?

18 MR. SCHAUBLE: Then what we are left with, Your  
19 Honor, is the customer print screens showing end dates.

20 JUDGE CHACHKIN: No, we are not left with that.  
21 We are not left with that. We are left with the witness'  
22 testimony. I do not know whether there were any other  
23 mobiles, if the customer was still operating or not.

24 You have the burden. You have to show that in  
25 fact there were not any customers on that particular date.

1 I do not think you can rely on the print screen when the  
2 witness says that there is a possibility that the customer  
3 still was using the service.

4 MR. SCHAUBLE: Your Honor, I respectfully disagree  
5 with you.

6 JUDGE CHACHKIN: This area should all have been  
7 covered in depositions. I do not understand why it was not,  
8 why we are doing it now. Then you would have had some  
9 answers. The witness then could have presumably made some  
10 further checks as to what the situation was. You did not  
11 ask these questions, even though you had four days of  
12 depositions.

13 Go ahead.

14 THE WITNESS: Mr. Schauble, WIK303 is one of those  
15 licenses that's scheduled for deletion with the application  
16 that was filed in 1994, so you're asking about a license  
17 that was asked to be deleted or cancelled or added to the  
18 large application that has been pending for four and a half  
19 years. You're beating on a dead horse.

20 JUDGE CHACHKIN: Let's go on, Mr. Schauble.

21 BY MR. SCHAUBLE:

22 Q Mr. Kay, please direct your attention to WTB  
23 Exhibit 154.

24 A Yes.

25 Q Is it correct that WIK761, WIK329, WIK330, WIK761

1 and WIK762 together constitute a Spillman formatted LTR  
2 trunk system?

3 A Which exhibits are you on, John?

4 Q 154.

5 A 154 is one license only. There's four licenses in  
6 this Spillman system up at Oat Mountain. This appears to be  
7 one of them, but I'd have to look at 19 to tell you that  
8 that -- to rattle off the correct four call signs.

9 MR. SHAINIS: Your Honor, may I approach the  
10 witness? I am wondering if there is a copying error of some  
11 sort. Exhibit 154 is a 16 page exhibit.

12 JUDGE CHACHKIN: Yes, it is a 16 page exhibit.  
13 What page are you interested in?

14 You have 16 pages there, do you not, Mr. Kay?

15 THE WITNESS: Yes. I have that here, but he's  
16 asking me if that's part of the -- if these are the licenses  
17 that are part of the Spillman system at Oat. That  
18 information was --

19 BY MR. SCHAUBLE:

20 Q Mr. Kay, direct your attention to Exhibit 155  
21 then.

22 A Yes. That's what I was looking for. Yes. Those  
23 are the WIK762, WIK329, WIK761 and WIK330 all function  
24 together as a Spillman system style system at Oat Mountain.

25 Q Okay.



1           A     That's right. If those are the four call signs  
2     you've got here, then you've got the four that are up on Oat  
3     Mountain for that system.

4           Q     Okay. Now, is there a pending modification  
5     application with respect to any of the stations that  
6     constitute part of this system?

7           A     No, I don't believe so.

8           Q     Okay.

9           MR. KELLER: Mr. Schauble, are you through with  
10    that exhibit, that particular exhibit? I just have a  
11    question for you. I do not want to interrupt you if you are  
12    in the middle.

13          MR. SCHAUBLE: Give me one second.

14          MR. KELLER: Sure.

15          (Pause.)

16          BY MR. SCHAUBLE:

17          Q     Mr. Kay, please turn to page 2 of Exhibit 155.

18          A     Yes, sir.

19          Q     Okay. Would this represent a separate operation  
20    separate and apart from the Spillman formatted trunk system  
21    under the same call sign?

22          A     Come again with that question. I don't understand  
23    it.

24          Q     Okay. This is additional operation under the call  
25    sign WIK761, correct?

1           A     I may be looking at the wrong page. I see. Okay.  
2     You're looking at page 2?

3           Q     Correct.

4           A     Yes.

5           Q     Okay.

6           A     Those are mobile units that operated just on  
7     WIK761 at one point in time on that frequency.

8           Q     Okay. Do you see the reference to Kaiser  
9     Foundation Hospitals?

10          A     Yes.

11          Q     Turn to page 7 in Exhibit 156.

12          A     Which exhibit?

13                 JUDGE CHACHKIN: Page 7.

14                 MR. SCHAUBLE: Exhibit 156.

15                 THE WITNESS: Yes.

16                 BY MR. SCHAUBLE:

17          Q     Do you see on the customer print screen for Kaiser  
18     Foundation Hospitals there is an end date of 3-31-94?

19          A     Correct.

20          Q     Did Kaiser Foundation Hospitals in fact terminate  
21     operation of its frequencies on or about 3-31-94?

22          A     You asked me about Kaiser yesterday, and I told  
23     you yes and that sometime subsequent to that they traded in  
24     to us 30 something odd unit and portables.

25          Q     I am sorry?

1           A     They quit somewhere around there. They traded in  
2     their radios to us. We discussed that yesterday.

3           Q     Okay. Turn to page 15 of the exhibit. Do you see  
4     a customer print screen for Universal Lock and Key, and do  
5     you see the end date there of 6-30-94?

6           A     Yes.

7           Q     Did Universal Lock and Key in fact cease operating  
8     on that frequency on or about 6-30-94?

9           A     I would presume so, but I don't have personal  
10    knowledge of it.

11          Q     Okay.

12          A     I remember they were one of our customers for  
13    quite some time.

14          Q     Mr. Kay, please direct your attention to WTB  
15    Exhibit 157, WIK332.

16          A     Okay.

17          Q     Now turn to Exhibit 158, which I believe to be the  
18    further answer to Interrogatory 4 with respect to that call  
19    sign. Do you see the reference there to Consolidated  
20    Commercial Maintenance and Enforcement Protection?

21          A     Yes, I do.

22          Q     Okay. Please turn to page 3 of Exhibit 159. For  
23    Consolidated Commercial Maintenance, do you see an end date  
24    there of 5-31-94?

25          A     Yes.

1           Q     Did they cease operating on that frequency on or  
2     about 5-31-94?

3           A     I don't have personal knowledge. That's what it  
4     says. I don't know if they continued after that or not.  
5     Customers will often times use units. I don't know the  
6     details of this account.

7           Q     Would it be correct that they ceased using  
8     repeater service on or about 5-31-94?

9           A     The end date would indicate the date we ceased  
10    billing them, which would presumably be when we ceased  
11    providing them repeating service.

12                   Also, you questioned this particular license.  
13    This license is scheduled to go away. It's part of another  
14    application that would consolidate the Sierra Peak repeater.  
15    It would go away. It's one of the lame duck repeaters I  
16    mentioned yesterday that's scheduled to go away --

17           Q     Okay.

18           A     -- and combined in an application that's already  
19    on file and been on file with the Commission for quite some  
20    time to eliminate this repeater and this call sign.

21           Q     Turn to Exhibit 160, WIK373. My first question is  
22    are you aware of any modification application pending for  
23    this station?

24           A     I believe there is, again to consolidate and  
25    change the system on this frequency. I believe there is

1 one, and this license will likely be one of the ones that  
2 goes away or be modified.

3 JUDGE CHACHKIN: Are you not aware, Mr. Schauble,  
4 of the applications which have been filed and which are  
5 pending?

6 MR. SCHAUBLE: Your Honor, in connection with this  
7 case we asked to do a search of any modification --

8 JUDGE CHACHKIN: Ask who to do a search?

9 MR. SCHAUBLE: The Commission staff up in  
10 Gettysburg.

11 JUDGE CHACHKIN: Did you get the material?

12 MR. SHAINIS: When was that request made?

13 MR. SCHAUBLE: Your Honor, there appears to be  
14 questions. There may have been some applications that were  
15 not found in connection with that search. Mr.  
16 Knowles-Kellett went up to Gettysburg last night to try and  
17 find additional applications.

18 JUDGE CHACHKIN: When was this request made?

19 MR. SCHAUBLE: I do not know the precise date,  
20 Your Honor. Mr. Knowles-Kellett --

21 JUDGE CHACHKIN: Give me the approximate date.

22 MR. SHAINIS: Yesterday.

23 MR. SCHAUBLE: Your Honor, my understanding is  
24 that I believe there was a search made about two months ago,  
25 and I believe there was an earlier search also.

1 JUDGE CHACHKIN: Well, this case has been pending  
2 for four years. Why have you waited this long to find out  
3 what applications are pending? These applications were  
4 filed in 1994, were they not, or earlier?

5 MR. SCHAUBLE: Some of them were, Your Honor.

6 JUDGE CHACHKIN: Well, are you not aware what  
7 applications? I mean, are we going to rely on a witness'  
8 recollection? Is that what we are relying on?

9 MR. SCHAUBLE: Your Honor, Mr. Knowles-Kellett  
10 should be down here later this morning hopefully with copies  
11 of --

12 JUDGE CHACHKIN: It would seem to me you should  
13 have had them about two years ago or more.

14 Let's continue.

15 MR. SHAINIS: Your Honor, I might want to add  
16 something to that, if I might?

17 JUDGE CHACHKIN: Yes.

18 MR. SHAINIS: The applications were Federal  
19 Expressed to my office for delivery sometime this morning.  
20 I called. When I stepped outside I called to find out.  
21 They had not been delivered yet.

22 THE WITNESS: You have two coming. There are  
23 probably 30 pending.

24 MR. SHAINIS: Two out of 30.

25 Your Honor, I believe Mr. Kellett, what he advised

1 me yesterday was that he had called his office in Gettysburg  
2 asking them to do another search and pull whatever they  
3 could find.

4 Clearly the applications were filed prior to the  
5 release of the designation order in this case. I think had  
6 the Bureau acknowledged the applications, and I am not  
7 casting aspersions on the Bureau at this point, I think  
8 probably this issue may have been either eliminated or  
9 framed in a totally different manner.

10 JUDGE CHACHKIN: All right, Mr. Schauble. Let's  
11 try to finish this as quick as you can because we do have  
12 other issues to deal with.

13 MR. SCHAUBLE: Very well, Your Honor. Your Honor,  
14 I would note that I am now going to be dealing with  
15 exhibits, and if counsel believes that any of the responses  
16 are incomplete or incorrect in any way, I would ask that  
17 counsel, as opposed to asking the witness about each --

18 MR. KELLER: What responses are incomplete or  
19 incorrect?

20 MR. SCHAUBLE: The answers to the portions of the  
21 further answers to Interrogatory No. 4.

22 MR. KELLER: Well, I have felt all along that most  
23 of these speak for themselves, and I do not know that the  
24 testimony has added a whole lot to that.

25

1 BY MR. SCHAUBLE:

2 Q Mr. Kay, please skip forward to Exhibit 171.

3 A Yes.

4 Q Do you see the reference there to Great American  
5 Transportation?

6 A Yes.

7 Q Now turn to page 1 of Exhibit 172.

8 A Yes.

9 Q Do you see the end date there of 4-30-94?

10 A Yes.

11 Q To your knowledge, did Great American  
12 Transportation continue to use this frequency after 4-30-94?

13 A The answer is, I don't know.

14 I'd like to clarify something on these end dates.  
15 It's not necessarily -- I'd have to check with my staff to  
16 see how they work it, but I do not believe that that should  
17 be considered as an absolute date by any means as to when a  
18 customer discontinued service.

19 We may have a customer who gets in arrears to us  
20 three months or even six months before we ultimately pull  
21 the plug on them. My staff would then -- after the matter  
22 gets turned over to legal and some resolution is made, the  
23 bills will either be paid or deleted or somehow disposed of.  
24 The end date could be when they actually turned off service,  
25 or it could be actually a date in arrears when the billings